

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Petition of Midwest Wireless  
Communications, LLC, for Designation  
as an Eligible Telecommunications  
Carrier Under 47 U.S.C. § 214(e)(2)

**THIRD  
PREHEARING ORDER**

This matter came on for motion hearings before Administrative Law Judge Kathleen D. Sheehy on October 31, 2002, by telephone. The following persons appeared:

Scott J. Bergs, Leonard, Street & Deinard, Suite 2300, 150 South Fifth Street, Minneapolis, MN 55402, on behalf of Midwest Wireless Communications, LLC (Midwest Wireless).

David A. LaFuria, Lukas Nace Gutierrez & Sachs, Suite 1200, 1111 19<sup>th</sup> Street, NW, Washington, DC 20036 on behalf of Midwest Wireless.

Linda S. Jensen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, MN 55103-2106, on behalf of the Department of Commerce (the Department).

Dan Lipschultz, Moss & Barnett, PA, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402, on behalf of the Minnesota Independent Coalition (the MIC).

Kevin Saville, Associate General Counsel, Citizens Communications, 2378 Wilshire Boulevard, Mound, MN 55364, on behalf of Citizens Telecommunications Company of Minnesota, Inc., (Citizens) and Frontier Communications of Minnesota, Inc. (Frontier).

**MIC'S MOTION TO COMPEL DISCOVERY**

MIC moved to compel responses from Midwest Wireless to Information Request Nos. 20(b), 21(a)-(c), 24, and 27, which were served October 23, 2002, and which seek information to substantiate statements made in the rebuttal testimony of Midwest Wireless witnesses (filed October 8) concerning its decisions to invest (or not) in plant and equipment depending on whether it receives designation as an ETC. Request No. 20(b) seeks information about Midwest's plans to invest in Minnesota in the next three years if it does not receive ETC designation; Request No. 21 seeks information about estimated revenues and return on investment for particular geographical areas with and without USF funding; Request Nos. 22 and 24 seek Midwest's criteria for including investments in its business plans; and Request No. 27 seeks Midwest's investment in

plant and equipment in Minnesota in 2000-2002. Midwest Wireless objected to these requests on the grounds that the information sought is not relevant.

A common carrier designated as an ETC must, throughout the service area for which the designation is received, offer the services supported by federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services, and must advertise the supported services and the charges therefor using media of general distribution.<sup>[1]</sup> The services a carrier must provide to receive ETC designation include the following: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single party service or its equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation to qualifying low-income customers.<sup>[2]</sup> In addition, in areas served by rural companies, a state commission may designate more than one ETC so long as the additional designation is in the public interest.<sup>[3]</sup> The MPUC has defined the public interest to include affordability, service quality, and similar public interest criteria as articulated in Minn. Stat. § 237.01, subds. 2 & 4.<sup>[4]</sup>

The information sought seeks to follow up on general, conclusory statements made in rebuttal testimony to the effect that Midwest Wireless would be able to make investments that it would not otherwise make if it receives USF funding. Some parties argue that the information sought is relevant to the question whether designation of Midwest as an ETC is in the public interest; Midwest contends it is not. The amount of a carrier's financial investment in plant and equipment is certainly not an express requirement of the statute, the rule, or the MPUC's Order in a similar case. The parties are free to cross-examine Midwest's witnesses about these statements, but the information requests do not seek information that is significant enough to warrant full-blown discovery at this stage of the proceeding (two business days before the hearing commences). The motion to compel discovery is DENIED.

### **MIDWEST'S MOTION TO COMPEL DISCOVERY**

Midwest Wireless moved to compel responses from MIC to information requests served October 22, 2002. Request No. 1(b) seeks information about the testimony of MIC witnesses in other proceedings, including the date, the type of proceeding, whose interests the witness was representing, whether the witness was paid, and a general description of the testimony. Request No. 5(a)-(l) seeks information concerning total investment, total revenues, return on investment, return on equity, dividends to shareholders, net revenues, total sales expense, detailed information about rate plans in effect in each exchange area, total access revenues, total number of lines supported by the Lifeline program, and a description of USF advertising activities, for each of MIC's 72 members. MIC objected to the requests as seeking information that is not relevant or is burdensome, although it has agreed to provide some information to the extent it can be assembled in the time before the hearing.

The motion to compel with respect to Request No. 1(b) is GRANTED, except that MIC need not identify whether the witness was paid or the amount. All expert and employee witnesses are paid, and the amount of their compensation is not relevant.

The motion to compel with respect to Request No. 5 (a)-(l) is DENIED. The members of MIC are not applicants in this proceeding, and the information sought is both burdensome and untimely. Midwest Wireless is free, as above, to cross-examine MIC witnesses as to whether they themselves meet the public interest standards they propose for Midwest Wireless; however, the information requests do not seek information that is significant enough to warrant full-blown discovery at this stage of the proceeding. MIC should provide the information it has agreed to provide, but nothing further is required.

Dated this 1<sup>st</sup> day of November, 2002

/s/ Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

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<sup>[1]</sup> 47 U.S.C. § 214(e)(1).

<sup>[2]</sup> 47 C.F.R. § 54.101(a).

<sup>[3]</sup> 47 U.S.C. § 214(e)(1).

<sup>[4]</sup> *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P5695/M-98-1285, Order Granting Preliminary Approval and Requiring Further Filings (October 27, 1999).